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**Agriculture & Natural Resources  
Committee**

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**HB 2785**

**Brief Description:** Regarding enforcement of environmental permits.

**Sponsors:** Representatives Upthegrove, Nelson, Lantz, McCoy and Simpson.

**Brief Summary of Bill**

- Permits the Fish and Wildlife Commission to block certain hydraulic project violations from criminal prosecution and limit penalties to civil natural resources infractions.
- Permits the Department of Fish and Wildlife to issue orders that require a person conducting an unlawful hydraulic project to stop working on the project or to restore any areas damaged by the project.

**Hearing Date:** 2/4/08

**Staff:** Jason Callahan (786-7117).

**Background:**

Hydraulic Project Approvals

Before beginning a construction project, a person must obtain a hydraulic project approval (HPA) for any project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. HPAs are issued by the Department of Fish and Wildlife (WDFW) to ensure the proper protection of fish life.

The WDFW is statutorily authorized to issue programmatic HPAs for small scale mining and prospecting, and for activities or projects conducted solely for the removal or control of certain aquatic weeds. The programmatic approval is in lieu of an applicant obtaining an individual HPA. Under the programmatic approval process, the WDFW publishes a pamphlet that states the rules for the activity covered by the programmatic permit..

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

HPA decisions may be appealed to the Director of the WDFW (Director) under the provisions of the Administrative Procedure Act. The appeal may be heard by the Director or an administrative law judge, but final appeal decisions are made by the Director. Certain appeals related to agriculture or off-site mitigation are heard by the Hydraulic Appeals Board, consisting of the directors of the WDFW, the Department of Ecology, and the Department of Agriculture.

A person who unlawfully undertakes a project in violation of the HPA requirements may be prosecuted for a gross misdemeanor. Prosecution is available if a person conducts a project without an HPA, or if a person violates the conditions of the operative HPA.

#### Natural Resource Infractions

A natural resource infraction is a civil penalty available for violations of certain statutes relating to natural resources. Monetary penalties for a natural resource infractions are set by the Supreme Court, with a maximum penalty of \$500.

#### **Summary of Bill:**

##### Civil Enforcement

The Fish and Wildlife Commission (Commission) is provided with the discretionary authority to identify certain classes of HPA violations that may not be prosecuted criminally. Those violations identified by the Commission are only subject to enforcement as a natural resource infraction.

##### WDFW Orders

The WDFW is provided with the authority to issue three different orders to individuals violating HPA requirements. The WDFW can issue an order to suspend work on any project in violation of HPA requirements or to restore any site that was damaged due to a project operated in violation of HPA requirements. Alternatively, the WDFW can order the project sponsor to both stop working and to restore the site.

A person receiving an order from the WDFW is entitled to 20 days to appeal the order. The WDFW may extend the 20-day appeal timeline through the rulemaking process.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.